

APR 22 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PIERRE STUCKEY,

Defendant - Appellant.

No. 07-50313

D.C. No. CR-92-01068-LGB
CV-05-2289-ER

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Honorable Edward Rafeedie, U.S. District Judge, Presiding

Submitted April 15, 2008^{**}

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

Pierre Stuckey appeals the district court's denial of his motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2). The denial of a motion to modify a

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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sentence is reviewed for abuse of discretion. *See United States v. Sprague*, 135 F.3d 1301, 1304 (9th Cir. 1998).

Stuckey was convicted on March 3, 1993 of bank robbery in violation of 18 U.S.C. § 2113(a) and (d). Stuckey contends that the district court abused its discretion in denying his motion to modify his sentence based on Amendment 599 to the U.S. Sentencing Guidelines. Amendment 599 is a retroactive amendment to the U.S. Sentencing Guidelines applicable to 18 U.S.C. § 924(c) offenses. *See United States v. Hicks*, 472 F.3d 1167, 1168 (9th Cir. 2007) (explaining background to Amendment 599). Amendment 599 is not applicable to this case as Stuckey was not convicted under 18 U.S.C. § 924(c). Therefore, the district court did not abuse its discretion in denying the motion for modification of Stuckey's sentence.

Accordingly, we grant the government's motion for summary affirmance of the district court's judgment. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

AFFIRMED.